IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

MFA.No. 9 of 2000(A)

OPMV.1430/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT: COMPLAINANT:

P.P.JOSE, S/O.POULOSE,
PELLISSERY HOUSE, MANNAMPETTA,
VATTANATHARA P.O., THRISSUR.

BY ADV. SRI.JIJO PAUL

RESPONDENTS: RESPONDENTS:
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1. K.N.BALAN, (***DELETED***)
KOLLANIPARAMBIL HOUSE,
THANISSERY, IRINJALAKUDA.

(THE NAME OF THE FIRST RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 8.8.2007 IN I.A.NO.1720/2007)

2. CHANDRAN @ KRISHNAN,
MULLAKKAL VEETTIL,
MANNAMPETTA, VATTATHATTA DESOM,
AMBALLUR VILLAGE, THRISSUR.

3. ORIENTAL INSURANCE CO. LTD.,
BRANCH KODUNGALLUR,
REP. BY BRANCH MANAGER.

BY ADV. SRI.M.JACOB MURICKAN
SRI.RAJESH CHAKYAT

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.9 of 2000

Dated this the 7th September, 2007.

J U D G M E N T

The claimant in O.P.(M.V) No.1430/1992, on the file of the Motor Accidents Claims Tribunal, Thrissur, is the appellant. The appellant sustained injuries in a motor vehicle accident on 20.2.1992. He filed the original petition claiming compensation. Respondents 1 and 2 filed written statements denying the negligence alleged against the driver of the vehicle and also the quantum of compensation. It was contented that the appellant was travelling in an auto rickshaw, and the accident occurred solely due to the negligence of the driver of the auto rickshaw. The insurer of the auto rickshaw disputed the negligence alleged against the driver of the autorickshaw.

2. According to the appellant, he was travelling in an auto rickshaw. It was further averred that the collision took place between that auto rickshaw and a stage carriage bus owned by the Kerala State Road Transport Corporation. According to the appellant, the accident occurred solely due to the negligence of the driver of the auto rickshaw, in which he was travelling. The Tribunal mainly relying

on the statement of the appellant in the F.I.Statement to the police, found that the accident occurred due to the negligence of the driver of the KSRTC. But it was found that in view of the provisions contained in Section 140 of the Motor Vehicles Act, the appellant-petitioner is entitled to get an amount of Rs.12,000/= under 'no fault liability' from the owner, driver and insurer of the auto rickshaw, and passed an award against them. Challenging that award, this appeal is filed.

3. The learned counsel appearing for the appellant has argued that in this case, appellant gave evidence as PW.1, and he gave evidence to the effect that the accident occurred due to the negligence of the driver of the auto rickshaw. It was contented that while he was undergoing treatment, police recorded a statement, in which it was wrongly recorded that the accident occurred due to the negligence of the driver of the KSRTC. It was further contented that though such a statement was there, the evidence given in this case was to the effect that the accident occurred due to the negligence of the driver of the auto rickshaw, and there was no cross examination to that point. It was contented that the scene mahazar and the report of the police would show that the accident occurred due to the negligence of the driver of the auto rickshaw, but the Tribunal has not considered that evidence at all.

4. The learned counsel appearing for the Insurer has argued that material on record clearly establishes that the accident occurred due to the negligence of the driver of the bus, and since the owner and driver of the bus are not impleaded, the appellant is not entitled get any amount as compensation.

5. After considering all aspects of the matter, I am of the view that it is only just and proper that the appellant be given another opportunity to prove the negligence alleged against the driver of the auto rickshaw. For that purpose, the case has to go back. I make it clear that I am setting aside the award to give the appellant an opportunity to prove the quantum of compensation, and also the negligence. That does not mean that there is any finding to the effect that the appellant is not entitled to get any compensation under Section 140 of the Motor Vehicles Act.

6. In the result, appeal is allowed. Award passed in this case is set aside. The case is remanded to the Motor Accidents Claims Tribunal, Thrissur, for fresh disposal.

Adv. Sri.Jacob Murickan, the learned Standing Counsel appearing Insurance Company, submits that the Insurer may also be given an opportunity to adduce evidence and cross examine the appellant. However, the same is opposed by the learned counsel appearing for the appellant stating that petitioner filed by the Insurer before the Tribunal to contest the matter on merit was dismissed. Counsel for the Insurer submits that as the owner of the auto rickshaw is not interested in the matter, the Insurer may be allowed to contest the matter. It is open to the 3rd respondent, Insurer, to file a petition to contest the matter on its merits. If such a petition is filed, the Tribunal shall consider the same, taking into account the change of circumstances, and pass appropriate orders.

The parties shall appear before the court below on 22.10.2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 9 of 2000

J U D G M E N T

Dated: 7th September, 2007.